

Fair Trade Commission

【FTC Newsletter】

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Four Cable Television System Operators in Kaohsiung City were Fined for Failure to File a Pre-Merger Approval Report

During the 893rd Commissioners' Meeting of the FTC on December 17, 2008, the FTC determined that Ching Lian Incorporated (hereafter called Ching Lian Cable TV Co.), Clearvision CATV Ltd. (hereafter called Clearvision CATV Co.), Gang Du Cable TV Co., Ltd. (hereafter called Gang Du Cable TV Co.) and Harborview Cable TV Co., Ltd. (hereafter called Harborview Cable TV Co.), had entered into a joint operational action in violation of Article 6(1)(iv) of the Fair Trade Act, and having met the predicate of Article 11(1) (ii) of the same law requiring pre-merger approval, and not having applied to the FTC for such pre merger approval, thereby violating Article 11(1) of the Fair Trade Act, the recipients of this decision were ordered from the day after their receipt of this order to forthwith cease and desist all illegal actions explained above. In addition, they were also ordered to pay fines which took the form of the following amounts: Ching Lian Cable TV Co. was fined NT\$10,000,000, Clearvision CATV Co. NT\$1,800,000, Gang Du Cable TV Co., NT\$7,400,000, and the Harborview Cable TV Co. NT\$1,400,000.

The FTC stated that in the northern part of Kaohsiung city's cable television market there

were currently two competitors, namely, Ching Lian Cable TV Co. and Clearvision CATV Co., while in Kaohsiung city's southern municipal market the competitors were Gang Du Cable TV Co. and Harborview Cable TV Co. According to the FTC investigation, between 2005 and July 2007, international investments from MBK Partners into CNS KBT Co., Ltd. resulted in the formation of an MSO organization among the four Kaohsiung cable TV market operators, with a joint operations center, a customer services center, a finance department, a broadband internet business division, an engineering section, and an administration unit, for a total of six joint operating areas that handled all of the 4 Kaohsiung city cable TV company business operations. These four cable television companies' joint activities in terms of program selection purchasing and download, engineering and customer service operational rotations and other cooperation and uniformity in administration and business operations, were deemed to pose the risk of actually restraining trade in the marketplace, resulting in the loss of respective independence through competitive market pressures to pursue profit, and thereby causing harm to marketplace competitive efficiency. Finally, the FTC noted that because there were only two competitors in each of Kaohsiung city's southern and northern cable television markets, the total combined market presence of these four competitors accounted for 100% of the market, and the combined illegal anticompetitive actions of the four operators had resulted in the loss of competition in the Kaohsiung cable TV marketplace over a long period of time and, given the duration of these ongoing violations, and the deleterious marketplace competitiveness and market order impacts, after taking into consideration the motivation and purpose behind the illegal actions, as well as the unjust gains involved; and the degree of the burden imposed by the illegal actions on the marketplace structure and market functioning; and the illicit proceeds gained; and previous illegal actions in terms of types of violations, numbers of violations, dates between violated activities and previous fines; giving due regard to assistance provided in the investigation and the offending firms' expressions of regret for their illegal conduct; and in light of the respective market share and business volume of the four participant companies, in accordance with Article 13(1) and Article 40(1), the respective companies were hereby ordered to immediately cease and desist from all illegal operations noted above, and fines were assessed on them.



Merger of Trinity NL B.V. and the Gala Television Corporation was not Prohibited

During the 893rd Commissioners' Meeting of the FTC on December 17, 2008, the FTC determined that the application regarding the proposed merger between the Dutch firm Trinity NL B.V. and the Gala Television Corporation, in accordance with Article 12(1) of the Fair Trade Act, would not be



opposed, but that in order to ensure that the overall economic interests would be advanced above the costs of restricted competition, the Commission attached the following stipulations: the applicant's ultimate investor, MBK Partners, with respect to the cable channel programming rights of the merged entities, must not exercise its supervisory corporate authority over the applicant or its subsidiaries, directly or indirectly, to unjustifiably restrain competition among the cable television operators or competitors, and must engage in any commercial actions predicated on different prices or other different terms and conditions.

The FTC indicated that this application's applicant had applied through its domestic subsidiary for permission to purchase all of the outstanding shares of the Gala Television Corporation to achieve 100% ownership, and as this ownership or purchase would exceed 33% of the outstanding shares of another firm, it implicated the merger provisions of Article 6(1)(ii) of the Fair Trade Act. Moreover, since the applicant's ultimate investor, MBK Partners, had already apparently merged with Prosperity, Everlasting, Wonderful, Li Guan, Ga Ho, New Visual Wave, Pei Chien, Suncrown, Ching Lian and Gang Du and ten other cable television companies, and since these cable television system operators had local market shares in excess of 38% and as high as 100%, the application implicated the provisions of Article 11(1)(ii) requiring application for pre-merger approval and establishing the standards there for, and so the applicant needed to first apply to the FTC for merger approval. In addition, in accordance with Article 12 of the Fair Trade Act, with respect to merger applications to The FTC, if the overall economic benefit of the merger outweighs the disadvantages resulting from the competitive restraints, then the merger shall not be prohibited, but to ensure that the overall economic benefit exceeds the restraints on competition, and to improve the market's ability to obtain programming for channels from IPTV and other program content providers, thereby enhancing competition within the cable television marketplace through imported content, it was therefore decided to add the

stipulated conditions noted above, while not prohibiting the merger from proceeding.



壹、一般水質檢測費用表

第一類：水質中一般性質測定(適用範圍：工業廢水、河川水、海水)

編號	分析項目	單價	編號	分析項目	單價
1	色度(度)(Pt)	...	31	總磷(總磷(T-Phosphate))	...
2	溫度(Temperature)	...	32	硫化物(Sulfide)	...
3	生化需氧量(BOD)	...	33	氰化物(Cyanide)	...
4	化學需氧量(COD)	...	34	亞氯酸鹽(Chlorite)	...
5	懸浮固體(SS)	...	35	陰離子表面活性劑(MBAS)	...
6	透明度(Visibility)	...	36	餘氯(Residual Chlorine)	...
7	揮發性固體(VS)	...	37	三氯化砷(As ₂ O ₃)	...
8	總固體(TS)	...	38	甲醛(Formaldehyde)	...
9	總溶解固體(TDS)	...	39	碘化物(Iodide)	...
10	大腸菌群數(Coliform Groups)	...	40	溴化物(Bromide)	...
11	總菌落數(Total Count)	...	41	水質(10公尺以內)	...
12	溶氧量(DO)	...	42	(10-50公尺以內)	...
13	比率電阻(Conductivity)	...	43	(50-200公尺以內)	...
14	色度(Color)	...	44	(200公尺以上)	...
15	濁度(Turbidity)	...	45		...
16	酸度(Acidity)	...	46		...
17	鹼度(Alkalinity)(CO ₃ ²⁻ /HCO ₃ ⁻)	...	47		...
18	鹽度(Salinity)	...	48		...
19	總硬度(Total Hardness)	...	49		...
20	總油脂(Oil&Grease)	...	50		...
21	總油脂(礦物性)	...	51		...
22	氨氮(NH ₃ -N)	...	52		...
23	亞硝酸鹽氮(NO ₂ -N)	...	53		...
24	硝酸鹽氮(NO ₃ -N)	...	54		...
25	有機氮(Organic N)	...	55		...
26	總氮(TKN)	...	56		...
27	鉍(Phenols)	...	57		...
28	硫酸鹽(Sulfate)	...	58		...
29	氯鹽(Chloride)	...	59		...
30	磷酸鹽(Phosphate)	...	60		...

Environmental Laboratory Association was Fined for Their Concerted Action

During the 910th Commissioners' Meeting of the FTC on April 15, 2009, the FTC determined that the fact that the Taiwan Environmental Laboratory Association (hereinafter referred to as the "violating party," had published its "Standardized Rates for Testing and Evaluation Services" on the Internet, and held a joint meeting on May 22, 2008 to select a coordinator to coordinate among industry participants the competitive bids regarding the provision of different environmental testing and evaluation services, was sufficient to affect the market's capacity for the provision of domestic environmental testing and evaluation services, in violation of the plain text of Article 14(1) of the Fair Trade Law,

besides ordering the violator to cease and desist from such illegal conduct, the FTC assessed on the said violator a fine of NT\$100,000.

The FTC indicated that it had received an anonymous tip by fax containing the meeting minutes of the "Roundtable discussion of the environmental testing and evaluation industry owner-operators and business managers," which stated that the violating party had held the above noted meeting on May 22, 2008, for which the meeting's agenda focused on joint price fixing, so that the Commission began an ex officio investigation on its own. The FTC's investigation found that the violating party had posted their "Standardized Rates for Testing and Evaluation Services" on the Internet, and that the said standard involved industry participants jointly colluding in determining the prices of products or services, and that the violating party had also held a "Roundtable discussion of the environmental testing and evaluation industry owner-operators and business managers" meeting on May 22, 2008. The

meeting had discussed the selection of coordinators for air conditioning ducts, water quality testing, water for human consumption, discernable, soil and underground water, and overall, environmental testing and evaluation, to encourage industry participants not to take part in the “Environmental Testing Certification Specialized Price Quotes System.” It moreover established a system of fines for noncompliance, all of which constituted actions that restrained commercial activities. The FTC also explained that the violating party was a trade association established pursuant to the Commercial Enterprises Act, thus meeting the definition provided in Article 2(iii) of the Fair Trade Act for an “enterprise”, and the above noted actions conformed to the definition provided in Article 7 of the same Act for “concerted actions.” Furthermore, the online publication of standardized industry prices on the website of the violating party might have resulted in industry participants relying on standardized rates in their negotiations with businesses seeking environmental testing and evaluation services, thereby restraining free trade by the trade association’s member industry participants, and adversely affecting the interests of businesses seeking their services. Although the efforts to coordinate prices among industry participants were without binding force, and none of the environmental testing firms actually abided by the standardized rates and to date no instances of successful price coordination had been discovered, even though the matters noted above were merely the contents of a meeting, they clearly had the appearance of a concerted action.

In addition, according to statistical data compiled by the Environmental Protection Administration, the EPA had domestically licensed 86 enterprises to engage in environmental testing and analysis (evaluation), of which 39 enterprises were industry participants who were members of the violating party, or 45% of the domestic industry. This was enough to have affected the market capacity for the provision of environmental testing services, in violation of the plain text of Article 14 (1) of the same Act.

FTV, SET, and CTV were Fined for Failure to Explain the Basis for Television Viewing Audience Ratings Figures

During the 894th Commissioners’ Meeting of the FTC on December 24, 2008, the FTC determined that the Formosa Television Inc. (hereinafter called FTV), Sanlih E-Television Ltd. (hereinafter called SET) and China Television Company, Ltd. (hereinafter called CTV) had announced television viewing audience ratings figures in their program broadcasts, without simultaneously explaining the basis for their research or other relevant information. Such behavior was deemed to be sufficient to have adversely affected fair trade in the marketplace, in violation of Article 24 of the Fair Trade Act, these three companies were therefore fined NT\$100,000 each, and were ordered to cease and desist from these illegal

acts.



The FTC indicated that, on May 21, 2008, during the premiere episode of FTV’s program “The Wife’s Side of the Family,” messages were displayed stating that the program was “rated first” and “continues to take first in ratings nationwide” etc., while the SET on June 25, 2008, in its broadcast of the episode of “Love is in the air,” inserted messages stating “rated first nationally after premiering,” and CTV in its broadcast of CTV Global News, inserted messages saying “rated first nationwide,” as television program viewing audience ratings indicators. However, all three entities failed to concomitantly publish the source of the data, the dates of the audience ratings, the territorial scope of the audience samples, the surveyed audience demographics, the survey techniques, the sampling method, the sampling error rates, the sample size, and the valid sample size, and other important trade information.

Furthermore, in accordance with regulations requiring television channels while broadcasting television audience viewer ratings figures, when the screen images cannot fully convey all of the above-mentioned information, they are to add complementary narrative explanations, to ensure fairness and balanced coverage, and to deploy their own print media resources or online access to the above-mentioned information. In light of the fact that these three television companies failed to comply with the regulation explained above and provide the required information, such failure was sufficient to have affected the course of trade, all in violation of Article 24 of the Fair Trade Act.

The FTC finally indicated that, after carefully considering FTV, SET, and CTV’s motives,

purpose, probable unjust gains attributable thereto, and harmful effects to the course of trade thereby, and all related circumstances, each of the above named entities was fined NT\$100,000, and ordered to refrain from all such illegal actions.

FTC Public Consultation Service Statistics

In order to improve consultation services for the public regarding the Fair Trade Act, and increase the effectiveness of the Fair Trade Act operations, the FTC provides consultation service bureaus within our headquarters and at the Executive Yuan southern regional operations center in order to respond to concerns raised by the public and industry regarding the content of our policies in relation to the Fair Trade Act. The FTC's consultation services in terms of service categories, consultative means and the efficacy of the consultations are provided below.

1. Consultation services

- (1) Complaints regarding possible violations of the Fair Trade Act and resolutions thereof, applications for approvals of mergers, and the processing of complaints regarding concerted actions.
- (2) Explanatory and consulting services regarding the Fair Trade Act.
- (3) Services related to the provision of promotional materials.
- (4) Other liaison services in relation to the responsibilities of the FTC.

2. Efficacy of consultation services

During 2008, the FTC provided 12,208 instances of consultations (or an average of 48 cases per workday), of which some 92.6% were provided by telephone. In terms of the nature of the request, responses in the form of explanatory advice regarding the Fair Trade Act were the most common for a total of 10,698 instances, or 87.6% of the services provided, followed by 618 handling comments and input from public (5.1%), 519 provision of educational materials (4.3%), and 373 explanation of application procedures (3.1%).

3. Places of service

FTC Service Center	FTC Southern Region Service Center
Address: 12F, No. 2-2 Jinan Rd., Sec. 1, Zhongzheng District, Taipei, Taiwan (R.O.C.) E-mail: ftcpub@ftc.gov.tw Direct Line: (02)2351-0022, Main Line: (02)2351-7588 ext. 380	Address: 5F, No. 436, Chengchung 1 Road, Chienjin District, Kaohsiung, Taiwan (R.O.C.) Direct Line: (07)251-0022 Fax: (07)271-4819

Looking at the trends over the past five years, the average annual caseload decreased from 15,539 in 2004 to 12,208 in 2008, for an average annual reduction of 5.8%, primarily because requests for explanations of the Fair Trade Act have been decreasing, which indicates that over many years of efforts by the FTC at effective promotion, the public has

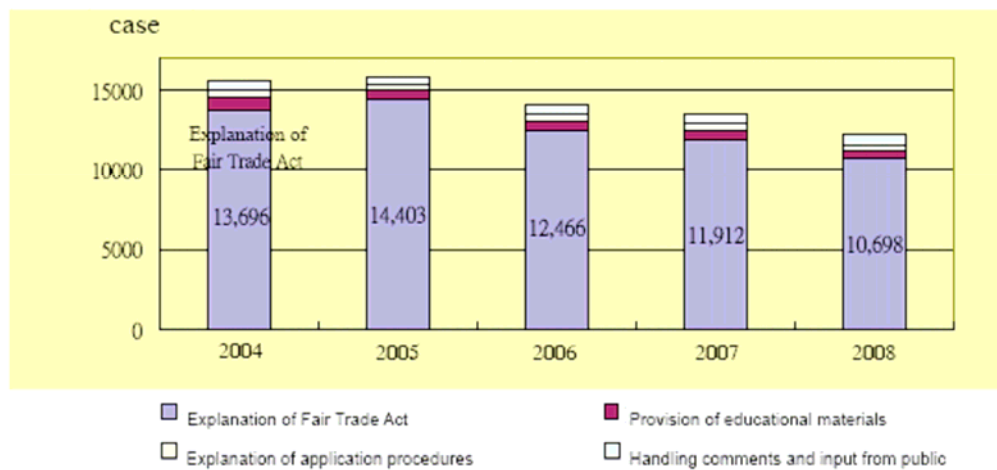
finally developed a reservoir of understanding of the regulations and content of the Fair Trade Act.

Fair Trade Public Consultation Service

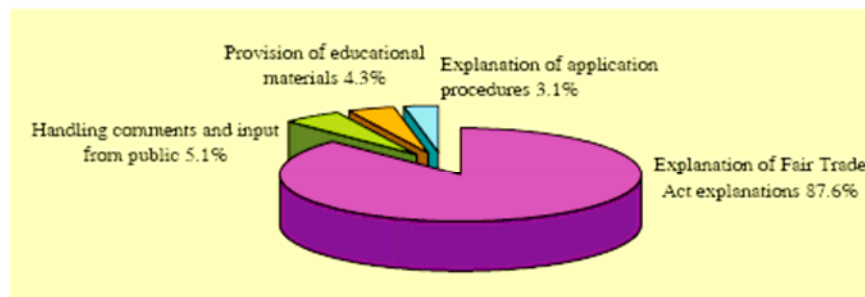
Units: cases

Year	Totals		Explanation of Fair Trade Act		Provision of educational materials		Explanation of application procedures		Handling comments and input from public	
		Phone calls		Phone calls		Phone calls		Phone calls		Phone calls
2004	15,539	14,709	13,696	13,304	843	475	453	432	547	498
2005	15,882	14,925	14,403	13,700	587	404	412	393	480	428
2006	14,074	13,318	12,466	11,920	576	421	500	477	532	500
2007	13,570	12,577	11,912	11,173	576	371	491	465	591	568
2008	12,208	11,307	10,698	10,031	519	380	373	323	618	573

Overview of the FTC's Recent Five Year Performance in Public Service Consultation Operations



2008 Annual FTC Public Service Consultation



FTC Activities in April 2009

- On April 8, 13, 20, and 30, training events in relation to the Fair Trade Law were respectively held at Chang Jung Christian University, Diwan University, Toko University and Southern Taiwan University of Science and Technology.
- On April 10 and 17, 2 sessions of the “Fair Trade Law Training Camp” were held for the faculty and students of the Soochow University law faculty.
- On April 14 and 21, two informational sessions were held in Kaohsiung City and Hualien County, respectively, for the Fair Trade Commission of the Executive Yuan’s guidance for market trade actions in agricultural products.
- On April 14, the Deputy Director of the Bureau of Foreign Trade of the Ministry of Economic Affairs, Tsunfang Hsu, delivered a lecture on “Globalization and Cross-Strait Trade Development.”
- On April 14, Mr. Aiwen He of the Changtsai International Law Offices delivered a lecture on the Relationship between International Intellectual Property Rights Agreements and competition law.”
- On April 29, a seminar was held on “How to enhance e-commerce businesses’ distribution of infringement warning letters for intellectual property rights to participants in online commerce.”
- On April 30, a seminar was held on the necessity of adjusting the cable television operating territories as seen from the perspective of improving Digital Convergence.



1. Scenes at the Fair Trade Act training camp.
2. The FTC held an event in Kaohsiung entitled the "The Fair Trade Commission of the Executive Yuan's guidance for marketing transactions of agricultural products."
3. The Deputy Director of the International Trade Department of the Ministry of Economic Affairs, Tsunfang Hsu, delivering a lecture on "Globalization and Cross-Straits Trade Development."
4. Mr. Aiwen He of Changtsai International Law Offices delivering a lecture on the Relationship between International Intellectual Property Rights Agreements and Competition Law.

FTC International Exchanges in April 2009

- From April 15 through 17, the FTC sent delegates to attend the OECD-Korea Policy Centre workshop on the Use of quantitative Methods in Competition Analysis.
- On April 16, the FFC participated in the International Competitiveness Network (ICN) Merger Working Group teleconference.
- On April 23, the FTC participated in the ICN coordination working group agenda "Notification and Procedural" matters small group teleconference.



Scenes from the OECD-Korea Policy Centre workshop.